

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

(6)

Original Application No. 1329 of 1995

Allahabad this the 22nd day of April 1997

Hon'ble Dr. R.K. Saxena, Judicial Member
Hon'ble Mr. D. S. Baweja, Admn. Member

Ganga Saran Sharma S/o Baby Lal Sharma R/o Village
and P.O. Aterna, District Balandshahar.

Applicant

By Advocate Sri Janardan Shahai.

Versus

1. Union of India through the Secretary, Ministry of Post & Telegraph, New Delhi.
2. The Superintendent, Post Offices, Balandshahar.

Respondents.

By Advocate Km. S. Srivastava

ORDER (Oral)

By Hon'ble Dr. R.K. Saxena, Judicial Member

The applicant - Ganga Saran Sharma has approached the Tribunal seeking the quashment of the order dated 14.3.1995 whereby the subsistence allowance of the applicant was reduced to 50%.

2. The facts of the case in brief are that the applicant was posted as Sub-Post-Master, Karora. He was implicated in a case under Section 409/468 I.P.C. and Section 5(2) read with Section 5-1(c) of the Prevention of Corruption Act. The case was

(X)

registered with the C.B.I. which had submitted the charge-sheet against the applicant in the year 1983.
He was prosecuted before the Special Anti-Corruption ^{Judge} Dehradun and was held guilty on 04.12.1984. He was convicted and sentenced to undergo two years R.I. and further to pay a fine of Rs. 1500. In default to payment of fine, he was further directed to undergo a simple imprisonment for a period of 4 months. The applicant was further convicted under Section 468 I.P.C. to undergo 15 months R.I. and to pay a fine of Rs. 1500/- In default of payment of fine, he was directed to undergo 4 months simple imprisonment. The applicant was also convicted and sentenced to undergo one year's R.I. under Section 5-1(c) read with Section 5(2) of the Prevention of Corruption Act and was ordered to pay a fine of Rs. 1500-00. In default of payment of fine, he was directed to undergo simple imprisonment of 4 months. All the sentences were directed to run concurrently.

3. It is furthered that the applicant preferred an appeal before the High Court. The appeal was admitted and the applicant was released on bail. It is stated that the said appeal is still pending disposal.

4. The case of the applicant is that the applicant was placed under suspension on account of the said criminal case and the subsistence allowance was fixed at the rate of 50% of his pay vide annexure-1. On periodical review, it is contended that the subsistence allowance was enhanced by 24% on 11.1.1983 and thereafter by 10% on 23.1.1984. After the conviction of the applicant in

(P)

the criminal case, his subsistence allowance was reduced to 50% vide order dated 14.3.1995. Feeling aggrieved by the order of reduction in the subsistence allowance, this O.A. has been filed with the relief as mentioned hereinbefore.

5. The respondents filed the counter-reply, in which it is contended that the applicant had committed grave offence and was convicted. It is further contended that after the conviction of the applicant, by the Trial Court, the department was justified in reducing the subsistence allowance.

6. The applicant filed rejoinder, reiterating the points taken in the O.A.

7. We have heard Sri Manish Nigam proxy counsel to Sri Janardan Sahai, counsel for the applicant and Km. S. Srivastava, counsel for the respondents. We have also perused the record.

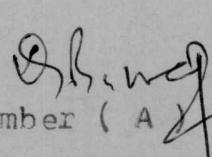
8. The main question for decision in this case is whether the reduction of subsistence allowance can be challenged by the applicant particularly in the background of the fact that he was found guilty of the offences under Section 409, 468 of I.P.C. and Section 5-1(c) read with 5(2) of Prevention of Corruption Act. Our attention has been drawn towards the decision in the case "Deputy Director of Collegiate Education (Administration) Madras Vs. S. Nagoor Meera 1995 S.C.C. (L&S) 686", Km. S. Srivastava who is placing reliance on this case, argues that when an

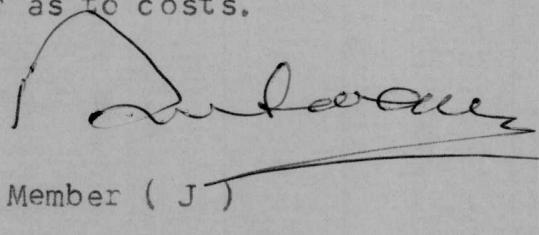
(a)

:: 4 ::

employee is found guilty and convicted by a criminal court after holding the trial, the applicant can be removed from service and the fact that appeal was preferred against the order of conviction and the delinquent employee having been released on bail, carries no weight. In the case cited above, the same law has been laid down by their Lordships of Supreme Court. Thus, what emerges is that after the conviction is recorded by the criminal court against an employee, he can be removed from service. The fact of appeal being preferred against that on conviction and the said employee having been released on bail, will not give him a right to continue in service. It was further observed by their Lordships that after an appeal is admitted and the convicted person is released on appeal, the sentence awarded to him, is suspended. That suspension of sentence will not entitle him to continue in service if the department so chooses.

9. Here in this case before us the department did not go to the extent of removing the applicant from service but what was done was that the subsistence allowance was reduced to 50%. In view of this legal position, we find no merit in the case and the O.A. stands dismissed. No order as to costs.


Member (A)


Member (J)

/M.M./